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July 10, 1987

Edward J. McCaffery, Esq.
Titchell, Maltzman, Mark,
Bass, Ohleyer & Mishel
The Hartford Building, 29th Floor
540 California Street
San Francisco, CA 94108

Dear Mr. McCaffery:

Your letter, dated July 6, 1987, to Mr. E. L. Sorensen, Jr., requesting advice regarding the application of Revenue and Taxation Code section 63.1 has been referred to this office for response.

The facts provided indicate that your client's mother died on October 6, 1986, devising her principal residence to her son. The final order for distribution of the residence, which was the only asset of the estate, was issued on July 6, 1987. The San Francisco Assessor has treated this as a change in ownership and issued a Notice of Supplemental Assessment to your client.

Since section 63.1 of the Revenue and Taxation Code (added by ch. 48 of the Stats. of 1987), which excludes this type of parent-child transfer from change in ownership, applies to transfers of real property completed on or after November 6, 1986, the question presented is whether the described transfer qualifies for the exclusion provided by section 63.1.

For purposes of determining the date of change in ownership of real property, property tax rule 462 (18 Cal. Adm. Code § 462), subdivision (n)(3) provides that in the case of inheritance by will or intestate succession the date of death of the decedent is the date of change in ownership. This rule is based upon Probate Code section 300 which provides, in effect, that at the death of testator, title to real property vests instantly in the person to whom it is devised subject to the possession of the executor or administrator and to the control of the superior court for purposes of administration. See also Pasadena Inv. Co. v. Weaver (1967) 376 P.2d 175; Estate of Reichel (1972) 28 Cal.App.3d 156. Since title to the subject property vested in your client on October 6, 1986, we conclude that the transfer occurred on that date and the

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Transfer


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San Francisco Assessor properly determined that section 63.1 does not apply.

Please be advised that the views expressed herein are advisory in nature and are not binding upon the assessor of any county. Please feel free to contact me if you have further questions on this subject.

Very truly yours,



Richard H. Ochsner
Assistant Chief Counsel

RHO:cb
0588D

cc: Hon. Samuel Duca
San Francisco Assessor

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton